

the requester's appeal is denied, the appeal package must include a signed statement by the IDA, demonstrating the IDA considered and rejected the requester's arguments, and the basis for that decision. This may be a separate memorandum, an endorsement on a legal opinion or OPR opinion, or the cover letter which forwards the appeal for final determination. Include in the cover letter forwarding the appeal to the Secretary of the Air Force the name, phone number and e-mail address (if any) of the person to contact about the appeal. The order and contents of appeal file attachments follow.

(i) The original appeal letter and envelope.

(ii) The initial FOIA request, any modifications of the request by the requester or any other communications from the requester, in chronological order.

(iii) The denial letter.

(iv) Copies of all records already released. (An index of released documents may be helpful, if there are a number of items. If the records released are "massive" (which means "several cubic feet") and AFLSA/JACL agrees, an index or description of the records may be provided in place of the released records. Do not send appeal files without copies of released records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the released records in appeal files. If you do not send the released records to AFLSA/JACL when a FOIA requester has appealed a partial denial, retain a copy of what was released for 6 years.)

(v) Copies of all administrative processing documents, including extension letters, search descriptions, and initial OPR recommendations about the request, in chronological order.

(vi) Copies of the denied records or portions marked to show what was withheld. If your organization uses a single set of highlighted records (to show items redacted from records released to the requester), ensure the records are legible and insert a page in the appropriate place stating where the records are located. (An index of denied documents may be helpful, if there are a number of items. If the records denied are "massive" (which means

"several cubic feet") and AFLSA/JACL agrees, an index or description of the records may be provided in place of the denied records. Do not send appeal files without copies of denied records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the denied records in appeal files. If you do not send the denied records to AFLSA/JACL, when a FOIA requester has appealed a denial, retain a copy of what was denied for 6 years.)

(vii) All legal opinions in chronological order. Include a point-by-point discussion of factual and legal arguments in the requester's appeal (prepared by an Air Force attorney and/or the OPR). If the IDA does not state in the cover letter he/she signed, that he/she considered and rejected the requester's arguments, asserting the basis for that decision (e.g., the IDA concurs in the legal and/or OPR assessments of the requester's arguments) include a signed, written statement containing the same information from the IDA, either as a separate document or an endorsement to a legal or OPR assessment. Include any explanation of the decision-making process for intra-agency documents denied under the deliberative process privilege and how the denied material fits into that process (if applicable).

§ 806.30 FOIA exempt information examples.

(a) Certain responsive records may contain parts that are releasable, along with other parts that the Air Force must withhold from release. Carefully delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to "read through the marking." In order to assist FOIA managers in redacting records, selected items appropriate to withhold in commonly requested Air Force records are illustrated below. When providing releasable portions from classified paragraphs, line through and do not delete, the classification marking preceding the paragraph.

(b) Exemption 1. Example used is an extract from a "simulated" contingency plan (all information below is

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fictional and UNCLASSIFIED; parenthetical information and marking is used for illustrative purposes only).

(U) Air Force members will safeguard all FELLOW YELLOW data (NOTE: FELLOW YELLOW simulates an UNCLASSIFIED code name).

During the contingency deployment in Shambala, those members assigned to force element FELLOW YELLOW will cover their movements by employing specified camouflage and concealment activities while behind enemy lines. Only secure communications of limited duration as specified in the communications annex will be employed until FELLOW YELLOW personnel return to base. (Exemption 1)

(c) Exemption 2. Example used is an extract from a “simulated” test administration guide (all information below is fictional and is used for illustrative purposes only).

When administering the test to determine which technicians are ranked fully qualified, make sure to allow only the time specified in HQ AETC Pamphlet XYZ, which the technicians were permitted to review as part of their test preparation. For ease in scoring this exam, correct answers are A, A, B, B, A, B, C, C, A, B, D, D, C, C, C, D; the corresponding template for marking the standard answer sheet is kept locked up at all times when not in use to grade answer sheets. (Exemption “high” 2)

(d) Exemption 5. Example used is a simulated IG Report of Investigation (ROI) recommendation. All parenthetical information in this example is fictional and is used for illustrative purposes only:

Having interviewed the appropriate personnel and having reviewed the appropriate documents, I recommend additional training sessions for all branch personnel on accepted Air Force standards, and the Air Force pursue administrative or judicial disciplinary action with respect to Terry Hardcase. (Exemption 5)

(e) Exemption 6. Example used is a simulated personnel computer report on a military member selected for a special assignment (all information below is fictional; information and marking is used for illustrative purposes only.):

SSgt Doe, Kerry E.	SSN: 111-11-1112	Date of Birth: 22 Jun 71
Duty Title: Special Assistant to CINCPAC	Office Symbol: CINCPAC/CCSA	

Duty Station: Hickam AFB HI 11111-1111	Date Assigned: 12 June 1998	
Marital Status: Divorced	Dependents: 01	Home Address: 12 Anystreet, Downtown ST 11112
Home Phone: (112) 223-3344 (Exemption 6)		

(f) Exemption 7. Example used is summary of a law enforcement report on a domestic disturbance at on-base family housing (all information below is fictional and all parenthetical information is used for illustrative purposes only):

At 2140, the law enforcement desk, extension 222-3456, took an anonymous call that reported a disturbance at 1234 Basestreet, quarters allegedly occupied by two military members. SrA Patrolman (names of law enforcement investigators usually are withheld under Exemptions 6 and 7(C)) arrived on the scene at 2155. SrA Patrolman met Nora Neighbor, (names of witnesses usually are withheld under Exemptions 6 and 7(C)) who was very agitated. Because she feared her neighbors would retaliate against her if they knew she reported their fight, she asked that her name not be released before she would talk. After she was promised her identity would remain anonymous, she stated: (Nora Neighbor became a confidential informant; data that could identify her, and in some cases, the information she related, should be withheld from release under Exemptions 6, 7(C) and (D).) “I heard cursing and heard furniture and dishes breaking. They fight all the time. I’ve seen Betty Battle (unless Betty is the requester, redact her name Exemptions 6 and 7(C)) with a black eye, and I also saw Bob Battle (unless Bob is the requester, redact his name Exemptions 6 and 7(C)) with bruises the day after they had their last fight, last Saturday night. This time, there was a tremendous crash; I heard a man scream “My Lord NO!” then I saw Betty Battle come out of the house with dark stains on her clothes—she got into her car and drove away. I could see this really well, because the streetlight is right between our houses; I’m the wife of their NCOIC. If only Nick, my husband, was here now, he’d know what to do! I haven’t heard anything from Bob Battle.” (Exemptions 6 and 7)

§ 806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of non-government contract-related information.

(a) The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

(b) In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government that is privileged or confidential. This generally includes information provided and received during the contracting process with the understanding that the Air Force will keep it privileged or confidential.

(c) Commercial or financial matter is “confidential” and exempt if its release will probably:

(1) Impair the government’s ability to obtain necessary information in the future.

(2) Substantially harm the source’s competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

(d) Applicability of exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

(1) Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

NOTE: Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2305(g) or 41 U.S.C. 423, if statutory requirements are met.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits,

losses, and expenditures, offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

(4) Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

(5) Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.

(6) Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320 to 2321 and 48 CFR, Chapter 2, 227.71–227.72.

(7) Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

(e) Submitter’s Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.